IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3024 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3024 of 1994

MS MAHROOK KERRAWALA for MR BP TANNA for Petitioner No. 1

MR UR BHATT AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 05/07/2004

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India challenges the order in the form of resolution dated 15th September, 1993 whereunder the resignation of the petitioner is accepted with effect

from 6th July, 1991.

2. The facts as are necessary for deciding the present petition lie in a very narrow compass. The petitioner tendered his resignation letter on 28th August, 1991 and in the said letter it is stated that the petitioner tenders his resignation with effect from 30th September, 1991 and accordingly tenders prior notice of one month to the respondent-State Government. On 25th September, 1991, the respondent sent a telegram wherein it was stated that the letter of resignation dated 28th August, 1991 cannot be accepted due to pending inquiry. The said telegram was followed by another telegram dated 26th September, 1991 wherein apart from the aforesaid communication of earlier telegram there was an additional direction to the petitioner from the Chief Personnel Officer, Health, Medical Services and Medical Education, Gandhinagar to join duty immediately. It appears that in the meantime, the petitioner was served with a chargesheet on 9th September, 1991 and the departmental inquiry commenced. On 31st March, 1993, the petitioner came to be exonerated of the charges framed against him. Thereafter, it appears that the impugned resolution dated 15th September, 1993 (Annexure "A") came to be passed.

3. Ms. Mahrook Kerrawala, learned advocate appearing on behalf of Mr BP Tanna, learned Senior Counsel for the petitioner submitted that the so-called acceptance of resignation was bad on two counts: firstly, it could not have been accepted from a date prior to the date mentioned in the letter of resignation; and secondly, the resignation came to be accepted after a period of more than two years, and in light of Rule 33A of the Bombay Civil Services Rules, 1959 could not have been accepted with retrospective effect. It was further submitted, in the circumstances, the petitioner was entitled to salary for the entire period upto the date of the said resolution and consequential benefits and allowances as may be available to the petitioner on the strength of the petitioner being Class-II Officer of the State Government.

4. Mr UR Bhatt, learned AGP appearing on behalf of the respondent submitted that the respondent be granted time to file affidavit-in-reply, and in the alternative, once the petitioner himself had tendered his resignation and the same having been accepted, there was no occasion for the petitioner to make any grievance. Elaborating on the submission, it was contended that the petitioner had nowhere stated that the petitioner had served the respondent for the period from the date of letter of

resignation till the date of acceptance of resignation and in absence of such a factual foundation, the Court should not issue any direction qua the claim for salary and allowances.

5. The petition was admitted as far back as on 3rd March, 1994. In the circumstances, no case is made out for granting time to file affidavit-in-reply after a period of more than a decade.

6. The respondent has not been able to show as to how does the date of acceptance, namely, 6th July, 1991 appear in the impugned resolution. In other words, no basis has been shown as against the fact that the letter of resignation dated 28th August, 1991 was made effective from 30th September, 1991 by giving prior notice of one month as required. Therefore, even if the resignation of the petitioner is accepted without taking into consideration any intervening circumstances, the said resignation could become effective only from the date it was tendered, namely, 30th September, 1991. The date of 6th July, 1991 has no relevance with any of the proceedings in question and there is nothing on record to show any nexus with the letter of resignation tendered by the petitioner. In the circumstances, the first contention raised by the petitioner deserves acceptance on facts. The impugned resolution is, therefore, bad in law on this ground.

7. There is one more aspect as can be seen from the impugned resolution. It states that the petitioner has not given the notice as required under the Rules before tendering his resignation. This statement is also factually incorrect when the letter of resignation dated 28th August, 1991 (Annexure "F") is taken into consideration. Therefore, in light of what is stated hereinbefore, the impugned resolution is bad in law for total non-application of mind. The same is accordingly hereby quashed and set aside.

8. Insofar as the prayer as to entitlement of salary, leave and all other allowances and benefits is concerned, it will be open to the petitioner to take up the same before the appropriate authority/forum as may be permissible in accordance with law.

9. In the circumstances, the petition is allowed to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

(D.A. MEHTA, J.)
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